PETITION NOT PRINTED

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 180

HARRY JOSEPH PAYNE, PETITIONER,

vs.

PAUL J. MADIGAN, WARDEN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 5, 1960
CERTIORARI GRANTED JUNE 27, 1960

Supreme Court of the United States

OCTOBER TERM, 1960

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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[fol. 1]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

No. 37967-Civil

HARRY JOSEPH PAYNE, PLAINTIFF

v.

PAUL J. MADIGAN, Warden, United States Penitentiary, Alcatraz, California, DEFENDANT

EXCERPT FROM DOCKET ENTRIES

1959

Jan. 14 Filed petition for writ of habeas corpus.
14 Filed order to show cause, returnable Jan. 22, 1959 (Burke)
• • • •
21 Ordered, hearing on order to show cause continued to Jan. 28, 1959. (Burke)
28 Ordered, hearing on order to show cause continued to Feb. 20, 1959 (Burke)
Feb. 6 Filed motion of plaintiff for immediate issuance of habeas corpus.
20 Hearing on order to show cause. Respondent directed to file return to order to show cause within 20 days and petitioner 5 days thereafter to reply. Case continued to March 20, 1959 for submission. (Harris)
24 Mailed notice to petitioner.
Mar. 3 Filed notice by petitioner of removing proceedings to Court of Appeals.
9 Filed notice (copy of letter) by respondent to petitioner of hearing March 20, 1959 and of availability of counsel
9 Filed return of respondent to order to show cause.

1959

Mar.	10	Filed petition of plaintiff for transfer of case to Court of Appeals, with copy of order of said Court remanding case to US District Court, Northern District of California. (Pope)
	17	Filed traverse of petitioner to return to order to show cause.
	20	Hearing on order to show cause. Counsel for defendant to advise petitioner by letter on legal points involved. (Harris)
	23	Filed notice (copy of letter) by defendant to petitioner of proceedings March 20, 1959.
	31	Filed reply of petitioner to return to order to show cause.
	31	Ordered case continued to April 7, 1959 for submission. (Harris)
Apr.	7	Ordered case continued to April 14, 1959 for submission (Harris)
	14	Ordered case continued to April 21, 1959 for submission (Harris)
	17	Filed further argument of defendant on traverse to return.
	21	Ordered case continued to May 20, 1959 for submission (Harris)
May	13	Filed reply of petitioner to further argument of respondent.
	19	Ordered case continued to May 25, 1959 for submission (Harris)
	20	Mailed notices
	25	Ordered case continued to May 29, 1959 for submission (Harris)
	26	Mailed notices
	29	Ordered after hearing, case submitted (Harris)
June	25	Filed order denying habeas corpus, dismissing petition and discharging order to show cause (Harris)
	25	Mailed copies order to petitioner, Warden, DA and Counsel for petitioner.
July	9	Filed notice of appeal by petitioner
	10	Mailed notices
	14	Filed reporter's transcript of hearing on order to show cause, March 20 and May 29, 1959.

• • • •

[fol. 3] (File Endorsement Omitted)

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION

Civil No. 37967

HARRY JOSEPH PAYNE, PETITIONER

v.

PAUL J. MADIGAN, Warden, United States Penitentiary, Alcatraz, California, RESPONDENT

PETITION FOR A WRIT OF HABEAS CORPUS—Filed January 14, 1959

The petition of Harry Joseph Payne respectfully shows:

I

That he is now imprisoned and restrained of his liberty by Paul J. Madigan, Warden, in the United States Penitentiary at Alcatraz, California, in the jurisdiction of this Court.

II

That the cause and pretense of such imprisonment and restraint, according to the best knowledge and belief of the petitioner, is seven (7) Judgments and Commitments issued under the color and authority of the United States District Court for the Eastern District of Tennessee, Southern Division, in Cases Numbered 10,676, 10,677, 10,678, 10,679, 10,680, 10,681 and 10,682.

III

That said imprisonment and restraint is illegal for the following reasons:

1. The oral judgment is too indefinite, ambiguous and equivocal to sustain consecutive sentences.

2. The petitioner has satisfied the legal portion of his sentence and is entitled to be discharged from the custody of the respondent.

[fol. 4] IV

That petitioner files herewith a memorandum in support hereof, accompanied by a certified copy of the true and complete transcript of the shorthand notes taken by the Official Court Reporter, in evidence of the proceedings had in the above numbered cases, designated "Exhibit A".

V

That no previous application has been made for the writ below prayed.

WHEREFORE, the petitioner prays that a Writ of Habeas Corpus issue, directed to the said Paul J. Madigan, Warden, commanding him to deliver the body of Joseph Payne, together with the cause of such imprisonment and restraint, forthwith, before the Court.

/s/ Harry Joseph Payne
HARRY JOSEPH PAYNE,
Petitioner

Duly sworn to by Harry Joseph Payne. Jurat omitted in printing. (all in italics)

[fol. 5]

MEMORANDUM IN SUPPORT OF PETITION FOR A WRIT OF HABEAS CORPUS (omitted in printing)

[fol. 6] EXHIBIT "A" TO PETITION FOR WRIT OF HABEAS CORPUS

Filed Apr. 2, 1956, Byron Pope, Clerk

IN THE UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF TENNESSEE,
SOUTHERN DIVISION

* * *

No. 10,677,
10,678
10,679
10,680
10,681
10,682
Criminal.

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

HARRY JOSEPH PAYNE, DEFENDANT.

Chattanooga, Tennessee, March 16, 1956

BEFORE:

The Honorable Leslie R. Darr, Judge.

Came Ass't U. S. Attorney James M. Meek, the defendant and his counsel, Mr. Wilkes T. Thrasher.

THE COURT: We have cases for judgment against one defendant. As I understand Mr. Payne has been before the Court and has waived indictment, being represented by counsel, waived indictment only here and has some transferred under Rule 20. There is some seven cases, is that right, Sir?

GEN'L MEEK: Seven all together.

THE COURT: And there has been no arraignment, is that correct?

GEN'L MEEK: That is correct, your Honor.

* * * *

[fol. 7] THE COURT: Are you ready for arraignment?

MR. THRASHER: Yes, your Honor.

THE COURT: Are you ready for arraignment, Mr. Payne?

DEFENDANT: Yes, sir, I am.

THE COURT: You may proceed, Mr. Clerk. The Clerk is going to inform you as to a summary of the charges in each count in each indictment or information. We will accept your plea of guilty or not guilty to each one as you want to.

[fol. 8] (The defendant was then arraigned separately as to each individual indictment or information and plead as follows:

To Case No. 10,676, defendant plead Guilty;
To Case No. 10,677, defendant plead Guilty;
To Case No. 10,678, defendant plead Guilty;
To case No. 10,679, defendant plead Guilty;
To Case No. 10,680, defendant plead Guilty;
To Case No. 10,681, defendant plead Guilty; and
As to Case No. 10,682, defendant plead Guilty.

* * * *

[fol. 9] THE COURT: At any rate it is quite a serious series of violations, Mr. Payne, and your demeanor and your talk are very appealing to the Court. I cannot see anything in you to indicate any desire of a vicious nature or anti-social nature, I don't see anything of that kind. But, on the other hand, you have committed so many offenses you must have known you would get a sentence.

So, we will proceed. I have considered all you have said about Mr. Payne, Mr. Thrasher. Mr. Payne is the man directly interested. I have gone over all these, looked at the first, tried to study the different counts and tried to study the counts where it was one information where it would be two charges and not double on those.

And the whole series of events figure the maximum punishment would be 66 years and $33,000.00 fine, that is the maximum. I am just telling you that, because you are going get much less than that amount. So the maximum is that, that could be given under the law. Of course I will not give the maximum, but when you have a series of cases you probably get off lighter per

case than you would if on one case. So, I begin with what I think is fair after studying the situation and [fol. 10] hearing you gentlemen on both sides and making some changes as I heard you, I made some changes in my liat in oeder to try to arrive at what is right, making the sentence in each of those cases two years. Also, if there is the count for taking the money orders and one for breaking and entering I have made them concurrent.

The first count of indictment No. 10,676 is a charge of first uttering and publishing as well as having in possession, that is probably two different things, anyway I am just putting one year in each count, concurrent.

No. 10,677 is breaking into a post office at Campaign Illinois, the second count is stealing the money orders at the time. So, I am just putting that as two years on the first count and one year on the other, making it concurrent or making two years for that charge.

No. 10,678 I will have to start back, 10,678 as I have it now is corrected. In that you are charged with breaking into the post office at Nunnelley, Tennessee, secondly stealing property from the postal department, which I assume to be the same offense. And 10,678, two years on the first count, one year on the second count, concurrent. That is the way I have got that.

Now, No. 10,679, is breaking in two different post offices, one at Hurricane Mills and the other one at [fol. 11] Nunnally, the same thing. I have No. 10,679 as two years on the first count, and one year on the second count concurrent.

No. 10,680, is a one-count indictment, breaking into the postoffice at Dukedom, Weakley County, two years on that.

No. 10,681, is from the Eastern District of Wisconsin, cashing two money orders as I get it. One year on each count, concurrent.

And then the last No. 10,682, breaking and entering the postoffice building in the Western District of Missouri that is two years, and all the different indictments will be consecutive. Now, let's see, that is thirteen years, is that correct?

GEN:L MEEK: I figure twelve.

MR. THRASHER: I figure twelve.

CLERK: Thirteen is right.

THE COURT: I figure fourteen. One as I say it was involving the same instance, I took off one.

Did you get it, Mr. Thrasher? 10,676, one year; 10,677 two years; 10,678 two years; 10,679, two years; 10,680 two years, 10,681 is two years; 10,682 is two years, consecutive as to all cases.

GEN'L MEEK: No. 10,681, how is that?

THE COURT: It is two years.

[fol. 12] I believe that is reasonable sentence in view of all the depredations. I do not believe in unusually long terms, but this is a pretty good term. I could easily hike that up to twenty years. That satisfies me. It is my best judgment and my conscience is satisfied. That will be the judgment of the Court.

Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 13] (File Endorsement Omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION

(Title Omitted)

EXCERPT FROM FURTHER ARGUMENT ON TRAVERSE TO RETURN TO ORDER TO SHOW CAUSE—Filed April 17, 1959

• • • •

[fol. 14] As a second matter petitioner now argues that if the sentences in his case are to be served consecutively it would create an illogical sentence since in case No. 10676 the sentence for one year confinement would have to be served in an institution other than a penitentiary; that thereafter he would have to serve eight years in the penitentiary upon cases Nos. 10677, 10678, 10679 and 10680; that thereafter he would have to be recommitted to an institution other than a penitentiary to serve a one year term in case No. 10681; and that finally he would again have to be committed to a penitentiary for the service of the two year term in the last case, No. 10682. The sentence in the first case enumerated has already been served and the petitioner is now serving the next consecutive eight years in a penitentiary. The fact that in the future petitioner shall be committed to an institution other than a penitentiary to serve a one year term in case No. 10681 and then be returned to the penitentiary to serve his last two year term, presents only an administrative problem within the purview of the prison authorities and is not related to a question of law affecting the service of consecutive sentences.

• • • •

[fol. 15] (File Endorsement Omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

No. 37967

HARRY JOSEPH PAYNE, PETITIONER

v.

PAUL J. MADIGAN, Warden, United States Penitentiary, Alcatraz, California, RESPONDENT

ORDER DENYING ISSUANCE OF WRIT—June 25, 1959

Petitioner, confined at Alcatraz Penitentiary, has filed an application for a writ of habeas corpus alleging that he has completed service of the sentence he concedes to be valid and is now entitled to his release.

The sole point raised by petitioner pertains to the nature of the sentence imposed by the trial court in March, 1956, when petitioner pleaded guilty to a series of indictments charging him with theft of postal money orders. Petitioner, then as now, represented by able counsel, received a sentence totalling twelve years on seven different indictments. The manner in which the sentencing court imposed judgment was to deal with each indictment in order. Separate judgments varied from one to two years [fol. 16] for the several indictments. At the conclusion of No. 10,682, the Court said: "And then the last. . . . 2 years, and all the different indictments will be consecutive. Now let's see, that is 13 years, is that correct?"

In the brief discussion which follows the several persons involved sought to clarify the total number of years which was actually 12, rather than 13. The record, however, is clear that the court in its judgment directed that petitioner be confined consecutively on the several indictments for a total sentence of 12 years.

As held in United States v. Daugherty, 269 U. S. 360: "Sentences in criminal cases should reveal with fair certainty the intent of the court and exclude any serious

misapprehensions by those who must execute them." The Daugherty opinion has been applied recently in a case covering separate indictments rather than separate counts. In Cole v. Sanford, 48 F. S. 729, the court sustained a consecutive judgment pertaining to separate indictments which were imposed in a manner similar to that utilized by the trial court in the principal case. Almost identical language has been held to constitute a valid, consecutive judgment in Fleish v. Swope, 226 F.2d 310 in this circuit.

In view of the fact that the trial judge, at the conclusion of his imposition of sentence stated, with clarity, that the defendant would serve the total period of 12 years, the case is distinguishable from United States [fol. 17] v. Patterson, 29 F. 775, and similar cases relied upon by petitioner.

Accordingly, IT IS ORDERED that the issuance of the writ of habeas corpus be, and the same hereby is, DENIED; that the petition be, and the same hereby is, DISMISSED; and the order to show cause be, and the same hereby is, DISCHARGED.

DATED: Jun. 25, 1959.

/s/ George B. Harris
United States District Judge

[fol. 18] (File Endorsement Omitted)

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

(Title Omitted)

NOTICE OF APPEAL—Filed July 9, 1959

The above named petitioner hereby files notice of appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the order of the United States District Court for the Northern District of California, entered in the office of the Clerk on the 25th day of June, 1959, denying the writ of habeas corpus petitioned for on the 14th day of January, 1959, and from each and every part of the said order as well as from the whole thereof.

DATED: July 1, 1959

/s/ Harry J. Payne
HARRY JOSEPH PAYNE
Petitioner-appellant
P.M.B. #1235
United States Penitentiary
Alcatraz, California

[fol. 19] IN THE
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION

(Title Omitted)

CERTIFICATE OF CLERK TO RECORD ON APPEAL

I, C. W. CALBREATH, Clerk of the United States District Court for the Northern District of California, hereby certify the foregoing and accompanying documents, listed below, are the originals filed in this Court in the above-entitled case and constitute the record on appeal herein as provided in the Federal Rules of Civil Procedure:

Excerpt from Docket Entries
Petition for Habeas Corpus
Order to Show Cause
Motion for Immediate Issuance of Habeas Corpus
Notice of Petition for Removal of Proceedings to Court of Appeals
Notice by Defendant of Proceedings on March 9, 1959.
Return to Order to Show Cause
Copy of Order from Court of Appeals Remanding Case to United States District Court
Traverse of Plaintiff to Return to Order to Show Cause
Notice (copy of letter) to Petitioner of Proceedings had on March 20, 1959.
Reply of Plaintiff to Response by Defendant to Traverse
Further Argument by Defendant to Return to Order to Show Cause
Reply of Plaintiff to Further Argument by Defendant
Order Denying Issuance of Writ
Notice of Appeal
Reporters' Transcript of Proceedings March 20 and May 29, 1959.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 23 day of July, 1959.

(SEAL) C. W. CALBREATH, Clerk,

By /s/ Margaret Blair
Deputy

[fol. 20] IN UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 16,552

HARRY JOSEPH PAYNE, APPELLANT

vs.

PAUL J. MADIGAN, Warden, United States Penitentiary, Alcatraz, California, APPELLEE

On Appeal from the United States District Court for the Northern District of California Southern Division

OPINION—Jan. 19, 1960

Before: Pope, Hamley, and Koelsch, Circuit Judges

HAMLEY, Circuit Judge:

This is a habeas corpus proceeding involving Harry Joseph Payne, a federal prisoner confined in Alcatraz penitentiary. He is being held to serve twelve years under seven written judgments and commitments. These judgments and commitments expressly provide for seven consecutive sentences to be served in sequence corrsponding to the numbers of the seven criminal cases.

In his application for a writ, Payne alleged that the oral pronouncements from the bench at the time of sentencing were too indefinite, ambiguous, and equivocal to sustain the consecutive sentences as set out in the written judgments and commitments. The district court denied the application, holding that the oral pronouncements were complete and unambiguous, and that they supported the sentences as set out in the written judgments and commitments. Payne appeals, raising here the same questions which he presented in the district court.[1]

[1] Habeas corpus, rather than a Title 28 U.S.C.A. § 2255 proceeding, is the proper remedy. See Butterfield v. Wilkinson, 9 Cir., 215 F.2d 320. If appellant is correct in his view of the law, he is entitled to release since, if the terms are to be considered concurrent rather than consecutive, he has already served the longest term imposed.

[fol. 21] On March 16, 1956, Payne pleaded guilty in the United States District Court, Eastern District of Tennessee, Southern Division, to all counts of six informations and one indictment alleging violations of the postal laws. The court then proceeded to impose sentences from the bench, as quoted in the margin.[2] Subsequently, but on the same day, the court signed and there were filed seven documents entitled "Judgment and Commitment," each of which is in the form prescribed in

---

[2] "'The first count of indictment No. 10,676 is a charge of first uttering and publishing as well as having in possession, that is probably two different things, anyway I am just putting one year in each count, concurrent.

"No. 10,677, is breaking into a postoffice at Campaign [sic], Illinois, the second count is stealing the money orders at the time. So, I am just putting that as two years on the first count and one year on the other, making it concurrent or making two years for that charge.

"No. 10,678 I will have to start back, 10,678 as I have it now is corrected. In that you are charged with breaking into the postoffice at Nunnelley [sic], Tennessee, secondly stealing property from the postal department, which I assume to be the same offense. And 10,678, two years on the first count, one year on the second count, concurrent. That is the way I have got that.

"Now, No. 10,679, is breaking in two different postoffices, one at Hurricane Mills and the other one at Nunnally [sic], the same thing. I have No. 10,679 as two years on the first count, and one year on the second count concurrent.

"No. 10,680, is a one-count indictment, breaking into the postoffice at Dukedom, Weakley County, two years on that.

"No. 10,681, is from the Eastern District of Wisconsin, cashing two money orders as I get it. One year on each count, concurrent.

"And then the last No. 10,682, breaking and entering the postoffice building in the Western District of Missouri that is two years, and all the different indictments will be consecutive. Now, let's see, that is thirteen years, is that correct?

"GEN'L MEEK: I figure twelve.

"MR. THRASHER: I figure twelve.

"CLERK: Thirteen is right.

"THE COURT: I figure fourteen. One as I say it was involving the same instance, I took off one.

"Did you get it, Mr. Thrasher? 10,676, one year; 10,677 two years; 10,678 two years; 10,679 two years; 10,680 two years; 10,681 is two years; 10,682 is two years, consecutive as to all cases.

"GEN'L MEEK: No. 10,681, how is that?

"THE COURT: It is two years."

Form 25, Appendix of Forms, Federal Rules of Criminal Procedure, 18 U.S.C.A.

[fol. 22] The judgment and commitment in criminal case No. 10,676 commits Payne to the custody of the attorney general for imprisonment for a period of one year. The judgment and commitment in criminal case No. 10,677 commits Payne for imprisonment for a period of two years "to begin at the expiration of the sentence imposed this day in Criminal Case No. 10,676." The judgment and commitment in criminal case No. 10,678 commits Payne for imprisonment for a period of two years "to begin at the expiration of the sentence imposed this day in Criminal Case No. 10,677." In like manner sentences of two, two, one, and two years were imposed, respectively, in criminal cases Nos. 10,679 to 10,682, inclusive. As a part of each sentence it was provided that the same would begin at the expiration of the sentence imposed that day in the immediately preceding numbered criminal case.

Payne concedes that the seven written judgments and commitments are unambiguous and expressly state that the seven sentences aggregating twelve years shall be served in the numerical order of the separate cases. He contends, however, that these written judgments and commitments have "no probative value." It is his position that the terms of the sentences depend exclusively upon the oral pronouncements from the bench, and that the latter are ambiguous as to the sequence of consecutive terms.

Rule 32(b), Federal Rules of Criminal Procedure, 18 U.S.C.A., which became effective on March 21, 1946, provides that a judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence. The sentence which is set forth in such judgment, however, must have been imposed in the presence of the defendant. Rule 43, Federal Rules of Criminal Procedure. It follows that if the sentence as set forth in the judgment departs in a matter of substance from the oral pronouncement of the sentence, it is void, though subject to correction under Rule 35, Federal Rules of Criminal Procedure.

The order of serving consecutive sentences is a matter of substance. Sentences in criminal cases should reveal with fair certainty the intent of the court and exclude any misapprehension by those who must execute them. In keeping with this principle, it has been held necessary for the court to indicate the sequence of sentences when consecutive sentences are imposed. United States v. Daugherty, 269 U. S. 360.

[fol. 23] The district court thought that the oral pronouncement indicated with sufficient clarity that the consecutive sentences were to be served in the same sequence as the numerical order of the cases. If this is so, then the written judgment and commitments are in complete conformity with the oral sentences.

Had the oral sentences been imposed with regard to the counts of a single indictment or information, we would have no hesitancy in concurring in this determination by the district court.[3] But where, as here, the consecutive sentences pertain to six informations and an indictment, there is authority for the view that a more precise specification of the order of sentences must be indicated than is to be found in the instant oral sentences.[4]

In providing that more precise specification of the order of sentences, the written judgments and commitments entered herein did not depart from the oral pronouncements. At most they resolved an ambiguity. In the oral pronouncements it was indicated that the sentences were to be served consecutively. The manner in which the pronouncements were made indicates that a sequence of sentences corresponding to the numerical order of the cases was probably intended. The written judgments and commitments, signed by the judge on the same day, confirm this inference. In our view written judgments and commitments may properly serve the function of resolving ambiguities in orally pronounced sentences.

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[3] United States v. Daugherty, supra; Fleish v. Swope, 9 Cir., 226 F.2d 310.

[4] Puccinelli v. United States, 9 Cir., 5 F.2d 6; United States v. Patterson, C.C., 29 Fed. 775.

What we have said with respect to the sequence of sentences has equal application with regard to the clarification of the total time to be served, concerning which there was some confusion at the time of sentencing. It also requires rejection of several minor points of ambiguity suggested in appellant's brief.

Affirmed.

[fol. 24] POPE, Circuit Judge.

I concur. The appellant's argument that the written judgments have "no probative value" seems to fly in the face of Criminal Rule 32(b), which, in providing that the "judgment shall be signed by the judge and entered by the clerk" appears to provide that the "judgment of conviction" in a case of this kind is the one signed by the judge.

A statement indicating a contrary view was made in a footnote to Spriggs v. United States, 9 cir., 225 F. 2d 865, 868. Although I participated in that decision, I now think I should express my doubts of its correctness. It was pure dictum, for the order in that case was merely one denying a plea in bar. That case did not concern a "judgment of conviction" which is what Rule 32(b) is about.

• • • •

[fol. 25] IN UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 16,552

HARRY JOSEPH PAYNE, APPELLANT

vs.

PAUL J. MADIGAN, Warden, United States Penitentiary, Alcatraz, California, APPELLEE

JUDGMENT—Jan. 19, 1960

Appeal from the United States District Court for the Northern District of California, Southern Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California, Southern Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the order of the said District Court in this cause be, and hereby is affirmed.

(File Endorsement Omitted)

[fol. 26] Clerk's Certificate to foregoing Transcript Omitted in Printing.

[fol. 27] SUPREME COURT OF THE UNITED STATES

No. 729, Misc., October Term, 1959

HARRY JOSEPH PAYNE, PETITIONER

vs.

PAUL J. MADIGAN, Warden

On petition for writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI—June 27, 1960

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1040 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1960 575502 606